IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.25458 of 2007

1. **SHANKAR KUMAR, SON OF DOORGA SHAO, RESIDENT OF VILLAGE/MOHAKLLA-MURLI HILL, DOMTOLI ROAD, GAYA KOTWALI, DISTRICT-GAYA, BIHAR.**
2. **JANKI DEVI @ PARWATI DEVI, WIFE OF SRI DOORGA SHAO, RESIDENT OF VILLAGE/MOHALLA-MURLI HILL, DOMTOLI ROAD, GAYA KOTWALI, DISTRICT-GAYA, BIHAR.**

……PETITIONERS.

Versus

1. **THE STATE OF BIHAR.**
2. **JAGDISH PRASAD NAYAK, S/O LATE GURU CHARAN SHAO, RESIDENT OF VILLAGE-GOPAL GANJ, P.S. GHOSI, DISTRICT-JEHANABAD.**

……..OPPOSITE PARTIES.

For the Petitioner: Mr. Nagendra Sharma, Advocate.
For the State : Mr. Jhakhandi Upadhaya, A.P.P.
For O.P. No.2 : M/s. Ranjeet Kumar and Sunil Kumar, Advocates.

WEB COPY NOT OFFICIAL

O R D E R

This application at the instance of the two petitioners is for the quashing of the order dated 9.5.2007 passed in Complaint Case No.647 of 2001 by the learned Sub-Divisional Judicial Magistrate, Jehanabad, whereby he has rejected the petition of the petitioners for their discharge.

According to the complainant, one Jagdish Prasad, impleaded as O.P. No.2 herein, the marriage of his daughter, Kanchan Kumari, was solemnized with petitioner no.1, Shankar Kumar, on 30.5.1996 at the Vishnupad temple, Gaya, whereat costly items and gifts were presented to the bride as also the bridegroom. It is alleged that ever since her entry into the matrimonial home, Kanchan Kumari

was ill-treated and tortured in various ways and manner and eventually at around 7 P.M. on 15.8.1996 she was thrown out of the matrimonial home purportedly on the ground that she had not brought with her the expected and sufficient dowry. She was also warned that if she wanted to reside in the matrimonial home, then she should come with cash worth Rs.25,000/- , a motorcycle and a coloured television set. Efforts to arrive at an amicable settlement having resulted in naught , a meeting was arranged at Gaya on 18.11.2001 which the accused persons attended but instead of settling the matter they threatened to kill Kanchan and reiterated their demands.

It has been submitted by the learned counsel for the petitioners that the complainant had not come with clean hands and had suppressed material facts. In this connection, it was submitted that Kanchan Kumari was never ready and willing to lead the married life with petitioner no.1 and expressed her intentions from the very beginning and as a matter of fact preferred Matrimonial Case No.26 of 2000 under Section 13 of the Hindu Marriage Act and obtained an ex-parte decree of divorce by order dated 7.5.2004 from the court of the District Judge, Jehanabad suppressing several material facts that prior thereto the husband had, because of Kanchan Kumari refusing to lead the conjugal life with him and without obtaining a divorce solemnizing another marriage with one Sunil Sao in the year 1999, preferred Title(Matrimonial) Suit No.41 of 2001 against Kanchan and her father under Section 9 of the Hindu Marriage Act and had obtained by order dated 28.11.2003 a decree for restitution of conjugal

WEB COPY NOT OFFICIAL

rites from the court of the 7th Additional District Judge, Gaya. It is also submitted that even prior thereto a complaint case for commission of offences under Sections 494, 379, 120B I.P.C., being Complaint Case No.466 of 2001 had been filed against Kanchan, her family members and Sunil Sao and the same was still pending.

The further submission on behalf of the petitioners is that as the court was proceeding to frame charges without examining the complainant and the victim before charge and by banking only on the evidence before charge of the two witnesses who were not even aggrieved, the petition for discharge was filed and the same was rejected perfunctionly by the impugned order without considering the submissions of the petitioners giving rise to a lurking suspicion that the order was mechanical and without application of mind.

WEB COPY NOT OFFICIAL

From perusal of the impugned order, it appears that the learned Magistrate while noticing the fact that the complainant and the victim had not been examined before charge yet appears to have found sufficient materials, from the testimony of the two witnesses examined before charge, to be available so as to frame charge under Section 498-A I.P.C.

Admittedly, Sections 227, 239 and 245 Cr.P.C. provide for giving a hearing to the accused to make out a case for their discharge and for the court to consider all the materials available on the record. In the instant case admittedly the complainant and the victim have not been examined before charge. Admittedly, also the complainant has not come with clean hands and have suppressed vital material facts of

his daughter having married Sunil Sao and then having obtained a divorce. The complainant is also silent about Shankar Sharma having obtained a decree of restitution of conjugal rites and the pendency of the complaint case. The learned Magistrate does not appear to have applied his mind to the situation at hand and considered the plausible defence and the materials produced by them in support of their plea for their discharge. Justice appears to have suffered.

In the facts and circumstances of the case, it would only be meet and proper to quash the impugned order and remit the matter to the learned Magistrate for reconsideration and passing of fresh orders in the light of the observations made in the foregoing paragraphs.

(Abhijit Sinha,J)

WEB COPY
NOT OFFICIAL

Patna High Court, Patna.
Dated: The 12th of November, 2008.
Pradeep Srivastava/A.F.R.